

§ 23.6

shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appropriate State water pollution control agency, or by the Secretary of the Interior; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—unless and until it has been affirmatively demonstrated to the State water pollution control agency and to the Department of the Interior that such lowering of quality is necessary to economic and social development and will not preclude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features; the district manager may prohibit or otherwise restrict operations on such part of an area.

(e) If, on the basis of a technical examination, the district manager determines that there is a likelihood that there will be a lowering of water quality as described in paragraphs (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued or contract made until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. section 466 *et seq.*) or of Executive Order No. 11288 (31 FR 9261). Where a permit or lease is involved the district manager's determination shall be made in consultation with the mining supervisor.

(f) Each notice of a proposed appropriation of a materials site filed by the Department of Transportation under 23 U.S.C. 317 shall be transmitted to the proper district manager. The district manager shall cause a technical examination to be made as provided in paragraph (a) of this section and shall for-

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mulate the requirements which the State highway department or its nominee must meet. If the land covered by the proposed appropriation is under the jurisdiction of a bureau of the Department other than the Bureau of Land Management, the district manager shall consult representatives of the bureau administering the land. If the district manager determines, or, in an instance in which the land is administered by another bureau, a representative of that bureau determines that the proposed appropriation is contrary to the public interest or is inconsistent with the purposes for which such land or materials are reserved, the district manager shall promptly submit the matter to the Secretary of the Interior for his decision. In other instances, the district manager shall notify the Department of Transportation of the requirements and conditions which the State highway department or its nominee must meet.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§23.6 Basis for denial of a permit, lease, or contract.

An application or offer for a permit, lease, or contract to conduct exploratory or extractive operations may be denied any applicant or offeror who has forfeited a required bond because of failure to comply with an exploration or mining plan. However, a permit, lease, or contract may not be denied an applicant or offeror because of the forfeiture of a bond if the lands disturbed under his previous permit, lease, or contract have subsequently been reclaimed without cost to the Federal Government.

§23.7 Approval of exploration plan.

(a) Before commencing any surface disturbing operations to explore, test, or prospect for minerals covered by the mineral leasing acts the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall consult with the district manager with respect to the surface protection and reclamation aspects before approving said plan.